

Donald J. Reino, SBN 93367
NELSON MULLINS RILEY & SCARBOROUGH LLP
Jamboree Center
4 Park Plaza, Suite 1240
Irvine, CA 92614
Telephone: (714) 350-7334
Email: don.reino@nelsonmullins.com

In Association with
Julia A. Mouser, SBN 118059
CANNON & NELMS
160 S. Old Springs Road, Suite 200
Anaheim, CA 92808
Telephone: (714) 637-4400; Fax: (714) 637-4444
Email: jmouser@cannonnelms.com

Attorney for Plaintiffs Barrett Purdum and Mike Armenta

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - WESTERN DIVISION

BARRETT PURDUM and MIKE
ARMENTA,

Plaintiffs,

vs.

DAVID WOLFE,

Defendant.

Case No.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMPLAINT

Plaintiffs Barrett Purdum ("Purdum") and Mike Armenta ("Armenta") (collectively, "Plaintiffs"), as and for their Complaint against defendant David Wolfe (hereinafter, "Wolfe" or "Defendant"), allege upon personal knowledge as to their own acts and as to events taking place in their presence, and upon information and belief as to all other facts, as follows:

COMPLAINT AND DEMAND FOR JURY

NATURE OF THIS ACTION

1
2
3 1. This is an action for declaratory judgment and trademark infringement. As described
4 more fully below, Defendant is knowingly utilizing Plaintiffs' OLIVERS marks in commerce without
5 the permission or consent of Plaintiffs to sell and advertise certain clothing products. Due to
6 Defendant's unauthorized use of the OLIVERS marks, Plaintiffs have and will continue to be
7 irreparably harmed unless such conduct is enjoined.

JURISDICTION AND VENUE

8
9 2. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and
10 1338(a), which confer original jurisdiction upon this Court for all civil actions arising under the laws
11 of the United States and any act of Congress relating to trademarks, respectively. In addition,
12 supplemental jurisdiction over related State law claims is conferred upon this Court by 28 U.S.C. §
13 1367(a).

14 3. Defendant is subject to personal jurisdiction in this Court as he is a resident of
15 California, because Defendant has caused tortious injury to Plaintiffs' trademarks within California;
16 and because Defendant practices the unlawful conduct complained of herein within California.
17 Similarly, as Defendant's wrongful acts occurred in San Francisco, venue is proper in this judicial
18 district under 28 U.S.C. § 1391.

PARTIES

19
20
21 4. Plaintiff Barrett Purdum is an individual residing in San Francisco, California.

22 5. Plaintiff Mike Armenta is an individual residing in San Francisco, California.

23 6. Upon information and belief, Defendant David Wolfe is an individual residing in San
24 Francisco, California.

BACKGROUND

25
26 7. Plaintiffs Barrett Purdum and Mike Armenta are experienced clothing designers with
27 extensive experience in the manufacturing and resale of high end clothing products.
28

9. Plaintiff created, developed, and designed marks to be used in branding the clothing line. These marks include, but are not limited to, the following:

9. Plaintiff created, developed, and designed marks to be used in branding the clothing line. These marks include, but are not limited to, the following:



(hereinafter, the "OLIVERS Marks").

10. Plaintiffs have used the OLIVERS Marks on web assets, product tags, social media content, and advertisements.

11. Through advertising and other promotional efforts, Plaintiffs have ensured that their marks have developed goodwill in the relevant apparel marketplace.

12. Defendant is not, and never has been, authorized to use the OLIVERS marks without the permission of Plaintiffs.

DEFENDANT'S MISCONDUCT

13. Plaintiffs and Defendant had planned to form a clothing company together. However, that relationship soured, and Plaintiffs and Defendant are no longer conducting business together.

14. Notwithstanding the soured relationship, Defendant is improperly using the OLIVERS mark to advertise and form a competing clothing line company, including the registration of the domain name, oliversapparel.com.

15. Despite the souring of the failed business relationship, Defendant refuses to cease from utilizing the OLIVERS marks to which he has no right to use.

SUBSTANTIAL HARM CAUSED BY DEFENDANT'S MISCONDUCT

16. Defendant's actions substantially harm Plaintiffs by causing confusion in the marketplace.

17. Defendant's actions deprive Plaintiffs of the opportunity to earn profits from the sale of legitimate OLIVERS branded products to consumers.

18. Defendant's actions substantially harm Plaintiffs and consumers who ultimately purchase the Defendant's non-genuine, infringing apparel.

19. Defendant's conduct results in customer confusion, as purchasers seeking to buy products from Plaintiffs may instead purchase products from Defendant.

COUNT I

TRADEMARK INFRINGEMENT

20. Plaintiffs hereby reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

21. Through Plaintiffs' use of the OLIVERS Marks, the marks have developed goodwill in the minds of the consuming public. As a result of Plaintiffs' use, the OLIVERS Marks have become widely associated with Plaintiffs, identify Plaintiffs as the source of their goods and services, and represent the valuable goodwill of Plaintiffs among members of the consuming marketplace. The goodwill associated with the OLIVERS Marks is a valuable asset that provides Plaintiffs with the long term ability to compete in the apparel marketplace.

22. Plaintiffs engage in interstate activities and online advertising designed to promote their goods and services sold, as well as the goodwill associated with their OLIVERS Marks.

23. By using and utilizing the OLIVERS Marks in his advertising, webpage, and products, Defendant is engaging in unfair competition, falsely designating the origin of his goods and services and/or falsely representing sponsorship by, affiliation with, or connection to, Plaintiffs and their goods and services, in violation of 15 U.S.C. § 1125(a).

24. By using and utilizing the OLIVERS Marks in his advertising, webpage, and products, Defendant is using the OLIVERS Marks or a confusingly similar designation in connection with the sale, offering for sale, distribution, and/or advertising of goods and services to the public, without

1 Plaintiffs' consent, and Defendant is falsely designating the origin of his goods and services and/or
 2 falsely representing sponsorship by, affiliation with, or connection to, Plaintiffs and thier goods and
 3 services in violation of 15 U.S.C. § 1125(a).

4 25. Accordingly, Plaintiffs are entitled to a judgment of three times their damages and
 5 Defendant's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. §
 6 1117(a).

7 26. Plaintiffs have been, and continue to be, damaged by Defendant's activities and
 8 conduct. Defendant has profited thereby, and, unless his conduct is enjoined, Plaintiffs' reputation
 9 and goodwill will continue to suffer irreparable injury that cannot adequately be calculated or
 10 compensated by money damages. Accordingly, Plaintiffs are entitled to injunctive relief pursuant to
 11 15 U.S.C. § 1116.

12 **RELIEF REQUESTED**

13 WHEREFORE, Plaintiffs prays for judgment in their favor and against the Defendant
 14 providing the following relief:

- 15 A. Enter judgment in favor of Plaintiffs and award just and proper damages;
- 16 B. An order that damages be trebled, and attorneys' fees be awarded, all as provided for
 17 under 15 U.S.C. § 1117;
- 18 C. Award Plaintiffs their costs incurred in bringing this action;
- 19 D. Award Plaintiffs prejudgment and postjudgment interest in the maximum amount allowed
 20 under the law;
- 21 E. Enter a permanent injunction restraining and enjoining Defendant and all of his agents,
 22 servants, employees, successors and assigns, and all persons in active concert or
 23 participation with him from utilizing the OLIVERS Marks; and
- 24 F. All other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request trial by jury on all claims so triable.

Dated: October 16, 2013

Respectfully submitted,
Nelson Mullins Riley & Scarborough LLP
Cannon & Nelms, P.C.,

/s/ Donald J. Reino

Donald J. Reino
Julia A. Mouser
Attorneys for Plaintiffs
Barrett Purdum and Mike Armenta,